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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.B., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

E071722

(Super.Ct.No. SWJ1600198)

OPINION

APPEAL from the Superior Court of Riverside County. Judith C. Clark, Judge.

Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant
and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Julie
Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant T.B. (mother) appeals from a juvenile court's order terminating reunification services at the six-month review hearing under Welfare and Institutions Code¹ section 366.21, subdivision (e). She argues that the court erred in finding she failed to participate regularly and make substantive progress in her case plan. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Dependency

On March 29, 2016, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition on behalf of T.B.'s two-year-old daughter. The petition alleged that she came within section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The petition included the allegations that mother and her daughter's father, V.T. (father),² had substance abuse problems. DPSS filed an amended petition on April 21, 2016, to include T.B.'s newborn son and to allege that mother and father (the parents) abused controlled substances and were transient. The court detained T.B.'s children (the children) on April 26, 2016.

Several amended petitions were filed, with the fifth and final one being filed on July 26, 2016. The fifth amended petition struck the allegation that the parents were transient. The court sustained the fifth amended petition, adjudged the children

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² Father is not a party to this appeal.

dependents of the court, and removed them from the parents' custody. The court ordered reunification services to be provided to the parents.

On January 30, 2017, the court found that mother completed her case plan and placed the children in her care on a plan of family maintenance. Father continued to receive services.

In June 2017, the social worker reported that mother was no longer in a relationship with father, and she filed a restraining order in January 2017, due to his verbal abuse toward her. Mother gave birth to another child, S.B., in April 2017.

On July 19, 2017, the court found that mother had completed her case plan, granted her sole physical and legal custody of the children, and terminated the dependency.

Current Dependency

On January 26, 2018, a reactivated section 300 petition was filed on behalf of all three children. The petition alleged that they came within the provisions of section 300, subdivisions (b) and (g). The petition specifically alleged that mother had an extensive substance abuse history, continued to abuse methamphetamine, and failed to benefit from previous services. An amended petition was filed on January 30, 2018, which included allegations that mother continued to abuse methamphetamine while caring for the children, and her son sustained a spiral fracture on his right tibia while in her care.

The court detained all three children on January 31, 2018.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on March 5, 2018, recommending that the court declare the children dependents, order reunification services for mother, and deny reunification services to father, pursuant to section 361.5, subdivision (b)(1). The social worker reported that she met with mother, who initially denied recent substance abuse, but then admitted to using methamphetamine “over the weekend.” Mother said she began using methamphetamine a month after the previous case was closed, in August 2017, and she had used about five times since she relapsed. Mother also confirmed that father was the biological father to all three children. His whereabouts were unknown.

On March 28, 2018, the court held a jurisdiction hearing and found that the children came within section 300, subdivisions (b) and (g). The court declared them dependents of the court, removed them from mother’s custody, and ordered mother to participate in reunification services. Her case plan included the requirements that she complete a domestic violence program, participate in individual counseling, participate in a psychotropic medication evaluation if referred by a therapist, complete a parenting class, submit to random drug testing, and complete an outpatient substance abuse program. The court denied father reunification services, since his whereabouts were still unknown.

Six-month Status Review

The social worker filed a six-month status review report on September 7, 2018, recommending that mother be provided with six more months of services. The social worker reported that mother was initially referred to her parenting program on April 18, 2018. She was again referred 17 more times in the following months. She began a parenting program on July 19, 2018, and had attended five of eight sessions. The program was ending on September 13, 2018.

Mother was initially referred to an outpatient substance abuse program on February 1, 2018. She enrolled on February 28, 2018, and attended 46 group counseling sessions and missed seven group sessions. She tested negative for all controlled substances numerous times from March 2018 to August 14, 2018. However, she tested positive for methamphetamine on March 12, 2018, May 31, 2018, and June 12, 2018. On July 18, 2018, mother tested positive for “benzo” and methamphetamine. She tested positive for alcohol on June 25, 2018, July 19, 2018, and July 30, 2018. She failed to appear for her random drug screenings on May 29, 2018 and June 13, 2018.

Mother completed an intake appointment for a domestic violence program on August 6, 2018, and attended her first session on August 16, 2018. She was required to complete 12 sessions.

As to her general counseling requirement, mother received numerous referrals to the San Jacinto Substance Abuse Program, and she reported that she had participated in five counseling sessions, starting in May 2018. However, the social worker spoke with a

staff member from the program, who informed her that mother was actually not participating in general counseling. The social worker referred mother again for general counseling. She also consulted with a Riverside University Health System Behavioral Health ACT staff member, who said that, due to mother's positive tests for alcohol, individual psychotherapy was not appropriate at that time.

The social worker additionally reported that mother participated in visitation throughout the review period, and the visits were going well. The social worker also reported that father contacted DPSS on July 18, 2018.

Overall, the social worker opined that mother was making adequate progress on her case plan, but was concerned that she would continue to use controlled substances while caring for the children.

The court held a six-month review hearing on September 20, 2018, and father appeared. The court found him to be the biological father of S.B. and the presumed father of the children. However, it concluded that return to him would create a substantial risk of detriment to them, and it continued all three children as dependents. The court ordered father to participate in reunification services for six months. As to mother, counsel for the children did not agree with continuing her services and requested the matter to be set contested. Counsel also requested the court to order her to submit to a hair follicle drug test. The court acknowledged mother's participation in services, but was concerned that she had tested positive for alcohol and controlled substances. Thus, it ordered her to submit to a hair follicle test and set the matter contested.

On October 17, 2018, the social worker filed an addendum report, recommending that mother receive another six months of services. The social worker reported that she was participating in a substance abuse treatment program and domestic violence program, but she had not completed her hair follicle test. Mother said she was willing to continue participating in her programs.

The social worker filed another addendum report on November 9, 2018, and changed her recommendation to terminating mother's services. Mother was discharged from her outpatient substance abuse program on September 13, 2018, due to excessive absences. She entered an inpatient substance abuse program on October 12, 2018, and was discharged from that program three days later. She expressed to staff that she wanted to leave the program because she had made a one-month advance rental payment, and she did not want to lose her housing. She left the inpatient program, against medical advice. Mother had a scheduled intake appointment on November 2, 2018, for another program, but failed to appear. As of November 9, 2018, she was not participating in a substance abuse treatment program.

Mother completed a hair follicle test on October 17, 2018, and tested negative for all controlled substances. On October 25, 2018 and October 30, 2018, she participated in saliva drug testing and tested positive for cocaine, opiates, methamphetamine, and amphetamines. She was scheduled for an on demand drug screening on October 31, 2018, but did not show.

As to her other requirements, mother completed her parenting program on September 13, 2018. She completed six sessions of a domestic violence program, and was scheduled to complete the program on December 6, 2018. DPSS informed her that she could not be referred for general counseling because of her positive tests for alcohol.

The social worker changed her recommendation because, throughout the review period, mother did not demonstrate an ability to maintain her sobriety long term. Furthermore, she had an extensive history of substance abuse, and a prior history with DPSS.

The court held a contested jurisdiction/disposition hearing on November 15, 2018, to address mother's services. The court noted that she had already been through one dependency with regard to the same issue of substance abuse, concerning two of the children, and that, within a month of that case closing, she started using again. Furthermore, although mother participated in 46 sessions of a substance abuse program, she tested positive in March, May, and June. Then she had a positive saliva test in July. She also tested positive in October. The court further noted that mother lied to the social worker and said she was engaged in counseling, when she had actually been deemed ineligible to participate in counseling because she had not been sober for 30 days at any point in the case.

The court acknowledged mother's participation in other programs, but concluded that her continued use of controlled substances showed she had not made substantive progress and was not benefitting from her substance abuse classes. The court found that

mother failed to make substantive progress in her case plan, there was no substantial probability of return if given another six months of services, and return of the children to her would create a substantial risk of detriment. The court therefore terminated her reunification services. It did not set a section 366.26 hearing, noting that father was still receiving services.

ANALYSIS

The Juvenile Court Properly Terminated Reunification Services at the Six-month Hearing

Mother argues that the court erred in finding that she failed to regularly participate in her reunification plan and terminating her services at the six-month hearing. We disagree.

At the six-month review hearing, the court must order the minor returned to the physical custody of his or her parent unless it finds, by a preponderance of the evidence, that returning the child would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. (§ 366.21, subd. (e).) The parent's failure "to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (*Ibid.*) In making its determination, the court must consider the efforts and progress shown by the parent and the extent to which the parent availed himself or herself of services provided. (*Ibid.*)

"We review the correctness of an order pursuant to section 366.21 to determine if it is supported by substantial evidence." (*In re Shaundra L.* (1995) 33 Cal.App.4th 303,

316.) “We resolve all conflicts in favor of the court’s determinations, and indulge all legitimate inferences to uphold its findings.” (*J.H. v. Superior Court* (2018) 20 Cal.App.5th 530, 535.)

Substantial evidence supports the court’s finding that mother failed to participate regularly and make substantive progress in her case plan. Mother’s case plan required her to complete a domestic violence program, participate in individual counseling, complete a parenting class, submit to random drug testing, and complete an outpatient substance abuse program. The only component she completed was the parenting class. She started a domestic violence program and completed six sessions, but was not scheduled to complete it until the month after the hearing.

Mother did not complete a substance abuse program, and she was not participating in one at the time of the hearing. She enrolled in an outpatient program on February 28, 2018, but was discharged on September 13, 2018, for excessive absences. She attended 46 sessions, and while participating in the program, she tested positive for methamphetamine on March 12, 2018, May 31, 2018, and June 12, 2018. On July 18, 2018, mother tested positive for “benzo” and methamphetamine. She tested positive for alcohol on June 25, 2018, July 19, 2018, and July 30, 2018. She failed to appear for her random drug screenings on May 29, 2018, and June 13, 2018. On October 25, 2018, and October 30, 2018, mother participated in saliva drug testing and tested positive for cocaine, opiates, methamphetamine, and amphetamines. She was scheduled for an on demand drug screening on October 31, 2018, but she did not show.

Mother entered an inpatient substance abuse program on October 12, 2018, but was discharged from the program three days later. She chose to leave the program against medical advice. Although she had an intake appointment scheduled for another program, she failed to appear.

Moreover, mother was unable to participate in counseling because she had tested positive for alcohol. The social worker told her she could not be referred for general counseling until she had 30 days of sobriety, which she never achieved.

Furthermore, as the court pointed out, mother's previous dependency case involved the same issue of substance abuse. Although she completed reunification services and had her children returned to her on family maintenance, she began using methamphetamine one month after that case was closed.

Mother emphasizes that she consistently visited the children. It is undisputed that she was visiting the children, and the quality of the visits was reportedly good. However, her visits with the children did not demonstrate that she was making substantive progress in her case plan.

We conclude the record discloses substantial evidence that mother failed to regularly participate and make substantive progress in her case plan. She tested positive for substances throughout the current dependency, even while she was participating in a treatment program. She did not demonstrate the ability to maintain sobriety. Therefore, the court properly terminated her reunification services.

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.